



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

WMP
Docket No. 3833-02
21 October 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, applied to this Board requesting a change in his reenlistment code.

2. The Board, consisting of Messrs. Pfeiffer, Shy and Ms. Humberd, reviewed Petitioner's allegations of error and injustice on 17 October 2002 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner enlisted in the Navy on 8 February 2000 at age 21 in pay grade E-1. However, due to statements that he made concerning his inability to comply with "restrictions on personal conduct in the armed forces" he was not transferred to recruit training but held pending an investigation.

d. Petitioner was notified on 9 February 2000 that a review of his enlistment was being conducted based on his statements of 8 February 2000. Specifically, Petitioner indicated that he had a juvenile police record that was sealed but would not disclose what the specific record was. He further stated that "he had

someone at home" but also would not clarify the meaning of that statement.

e. On 22 February 2000 Petitioner provided a statement that clarified his reasons for his inability to comply with "restrictions on personal conduct in the armed forces." Specifically, he said that he had recently participated in homosexual conduct and felt that he was bisexual.

f. On 23 February 2000, Petitioner was notified of pending separation action by reason of defective enlistment due to erroneous entry. He was advised of and waived all of his procedural rights, except for the right to obtain copies of documents which supported the proposed separation. On 2 March 2000, he received an uncharacterized entry level separation by reason of fraudulent entry into military service and was assigned an RE-4 reenlistment code.

g. Regulations state that a person's sexual orientation is considered a personal and private matter, and is not a bar to service entry or continued service unless manifested by homosexual conduct. During the accession process, all applicants, prospects and members of the DEP shall not be asked or required to reveal whether they are heterosexual, homosexual, or bisexual and will not be asked or required to reveal if they have engaged in homosexual conduct unless independent evidence is received indicating that the applicant engaged in such conduct or the applicant volunteers a statement that he is a homosexual or bisexual. Homosexual conduct is grounds for barring entry into the naval service.

h. Further, all applicants will be informed of the "restrictions on personal conduct in the armed forces" prior to enlistment. For those personnel enlisting through a military entrance processing station, a briefing is presently required prior to the oath of enlistment being administered.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board believes that Petitioner was correctly processed for separation by reason of defective enlistment due to his homosexual admission. Had military authorities known of his homosexual activity, he would not have been enlisted. Therefore, his enlistment was erroneous. However, it appears upon separation the reason for separation was incorrectly assigned as "fraudulent entry into military service." He was not processed for fraudulent entry and, in fact, he committed no fraud since he was not asked any questions about his

homosexual activities. The Board thus concludes that it would be appropriate and just to correct the record to show that he was discharged for "erroneous entry other." However, the Board believes that the assignment of the RE-4 reenlistment code was appropriately assigned, since he admitted to committing a homosexual act, which is a bar to enlistment.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 2 March 2000 he was discharged by reason of "erroneous entry other" vice by reason of "fraudulent entry into military service". This should include the issuance of a new DD Form 214.

b. That no further relief be granted.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

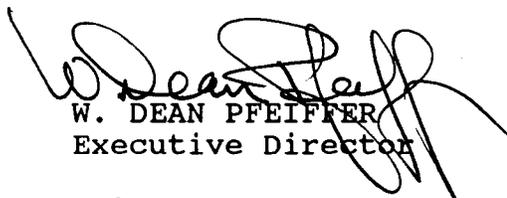
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director